IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LDG.) NO.138 OF 2007
IN
REVIEW PETITION NO.82 OF 2006
IN
WRIT PETITION NO.2119 OF 2005

Backbay Premises Co-op.Society Ltd. ....Appellant
V/s.
The Municipal Corporation of .
Brihanmumbai & Ors. ....Respondents

Mr.M.S. Bhandari i/b Singhania & Co. for the Petitioners.

Mr.K.K. Singhvi, Senior Counsel with Ms.Trupti Puranik for Respondent Nos.1 to 4.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 29TH JUNE, 2007.

P.C. :

1. The present Appeal is directed against the order dated 29.11.2006 in Review Petition No.82 of 2006 in Writ Petition No.2119 of 2005. The Petitioners were the original Petitioners in Writ Petition No.2119 of 2005. The minutes of the order signed by their counsel were filed before the Court. Based on the minutes of order, the learned Judge was pleased to dispose of the Writ Petition by the order dated 6.7.2006. The minutes of order are in the nature of the consent terms though not signed by the

parties but by their counsel, as is the normal practice and procedure in this Court.

2. The Petitioners thereafter filed a review contending that the minutes of the order were filed based on the wrong concession by their counsel. The learned Judge who heard the matter by an order dated 28.8.2006, dismissed the said Review Petition by holding that the original order dated 6.7.2006 was passed as a consent order in terms of the minutes of the order. The matter has been adjourned for today to enable the Petitioners to make a statement as to whether they are withdrawing the Petition with liberty to pursue the Appeal already filed by them before the Appellate Court. The learned counsel for the Respondents, had no objection to the said proceedings. The Appellants contend that they should be asked to deposit only the amount in terms of the order passed by the learned Supreme Court in Special Appeal preferred by Dalamal Towers, or in the alternative the amounts as calculated by them based on what has been set out in the judgment of Dalamal Towers. It is not possible for this Court to carry out that exercise in the present Appeal only unless the bills issued by the Corporation themselves are varied or modified. The counsel for the Corporation contends that the issue

can be gone into in this present Appeal.

3. Considering the fact that the Appeal is preferred in respect of the consent terms, this Appeal is not maintainable. On behalf of the Appellant, the learned counsel has relied upon the judgment of the Supreme Court in the case of *B.S. Bajwa and another vs. State of Punjab and others, (1998) 2 Supreme Court Cases 523.* In that case, the learned Supreme Court was pleased to hold that the concession extended by the Additional Advocate General on an issue of law would not bind the State and hence it was rightly withdrawn by the State by filing a Review Petition. Similarly reliance has been placed in the judgment of the Supreme Court in the case of - *Shah Babulal Khimji vs. Jayaben D. Kania and another, (1981) 4 S.C.C. 8*. That judgment is for proposition that the Letters Patent Appeal would lie against the order passed in Review. That a review normally would lie has not been seriously disputed. What has been disputed is that the order was passed based on the consent terms. An order rejecting a review based on an order passed on consent terms would not lie, just as an Appeal against the order passed on consent terms would not lie.

4. For the aforesaid reasons, no interference is

called for and the Appeal is accordingly dismissed.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)